

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION**

	)	No. 4:10-cv-04149-LLP
TCF NATIONAL BANK,	)	
	)	
Plaintiff,	)	<b>UNOPPOSED MOTION FOR LEAVE</b>
	)	<b>TO FILE BRIEF <i>AMICI CURIAE</i> IN</b>
v.	)	<b>SUPPORT OF PLAINTIFF TCF</b>
	)	<b>NATIONAL BANK BY THE</b>
BEN S. BERNANKE, Chairman of the Board	)	<b>CLEARING HOUSE ASSOCIATION</b>
of Governors of the Federal Reserve System,	)	<b>L.L.C., AMERICAN BANKERS</b>
in his official capacity; JANET L. YELLEN,	)	<b>ASSOCIATION, CONSUMER</b>
KEVIN M. WARSH, ELIZABETH A.	)	<b>BANKERS ASSOCIATION, CREDIT</b>
DUKE, and SARAH BLOOM RASKIN,	)	<b>UNION NATIONAL ASSOCIATION,</b>
Members of the Board of Governors of the	)	<b>THE FINANCIAL SERVICES</b>
Federal Reserve System, in their official	)	<b>ROUNDTABLE, INDEPENDENT</b>
capacities; and JOHN WALSH, Comptroller	)	<b>COMMUNITY BANKERS OF</b>
of the Currency, in his official capacity,	)	<b>AMERICA, MIDSIZE BANK</b>
	)	<b>COALITION OF AMERICA, AND</b>
Defendants.	)	<b>NATIONAL ASSOCIATION OF</b>
	)	<b>FEDERAL CREDIT UNIONS</b>

Pursuant to Federal Rule of Civil Procedure 7(b)(1), Local Civil Rule 7.2, and this Court's scheduling Order of December 10, 2010 (Dkt. No. 47), The Clearing House Association L.L.C., American Bankers Association, Consumer Bankers Association, Credit Union National Association, The Financial Services Roundtable, Independent Community Bankers of America, Midsize Bank Coalition of America, and National Association of Federal Credit Unions (collectively "*amici*"), by and through their counsel, submit this unopposed motion for leave to file a brief *Amici Curiae* in support of Plaintiff TCF National Bank ("TCF"). In support of this motion, *amici* state as follows.

1. *Amici* constitute every major nationwide bank and credit union trade association in the United States:

- **The Clearing House Association L.L.C.**, established in 1853, is the nation's oldest banking association and payments company. Its members include the world's largest commercial banks, which employ 1.4 million people in the United States and hold more than half of all U.S. deposits. The Clearing House is a nonpartisan advocacy organization representing through regulatory comment letters, amicus briefs and white papers the interests of its owner banks on a variety of systemically important banking issues. The Clearing House frequently represents the interests of the banking industry as *amicus curiae* in litigation concerning a variety of systemically important banking issues, including recent cases in the United States Supreme Court, the United States Courts of Appeals for the First, Second, Third, Fifth, Ninth, Eleventh, and Federal Circuits, and United States district courts. The Clearing House Payments Company provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost \$2 trillion daily.
- **American Bankers Association** ("ABA") is the principal national trade association of the financial-services industry in the United States. Founded in 1875, the ABA is the voice for the nation's \$13 trillion banking industry and its 2 million employees. ABA members are located in each of the fifty States and the District of Columbia, and include financial institutions of all sizes and types, both large and small.
- **Consumer Bankers Association** ("CBA") is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation on retail banking issues. CBA's members include most of the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the industry's total assets.
- **Credit Union National Association** ("CUNA") is the largest credit union advocacy organization in the country, representing approximately 90 percent of the nation's nearly 7,700 state and federal credit unions, which serve approximately 93 million members. CUNA benefits its members by partnering with its state leagues to provide proactive representation, the latest information on credit union issues, economic reports, regulatory analyses, compliance assistance, and education.
- **The Financial Services Roundtable** ("Roundtable") represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.
- **Independent Community Bankers of America** ("ICBA"), the nation's voice for community banks, represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers that it serves. With nearly 5,000 members, representing more than 20,000 locations nationwide and

employing nearly 300,000 Americans, ICBA members hold over \$1.2 trillion in assets, \$960 billion in deposits and \$750 billion in loans to consumers, small businesses, and the agricultural community.

- **Midsize Bank Coalition of America** (“MBCA”) is a group of 22 United States banks formed for the purpose of providing the perspectives of midsize banks on financial regulatory reform to regulators and legislators. The 22 institutions that comprise the MBCA operate more than 3,300 branches in 41 states, Washington, D.C., and three territories. Their combined assets exceed \$322 billion (ranging in size from \$7 to \$25 billion) and, together, they employ approximately 60,000 people. Member institutions hold nearly \$241 billion in deposits and total loans of more than \$195 billion.
- **National Association of Federal Credit Unions** (“NAFCU”), founded in 1967, exclusively represents the interests of federal credit unions before the federal government. Membership in NAFCU is direct; no state or local leagues, chapters, or affiliations stand between NAFCU members and its headquarters in Arlington, VA. NAFCU provides its members with representation, information, education, and assistance to meet the constant challenges that cooperative financial institutions face in today’s economic environment. NAFCU represents nearly 800 federal credit unions, accounting for 63.9 percent of total FCU assets and 58 percent of all FCU member-owners. NAFCU represents many smaller credit unions with limited operations as well as many of the largest and most sophisticated credit unions in the nation, including 82 out of the 100 largest FCUs.

2. With virtually unprecedented unanimity, *amici* stand in opposition to the Federal Reserve Board’s imposition of unreasonable and drastic price controls on debit card interchange fees. Over the past several decades, the financial institutions represented by *amici* have collectively invested billions of dollars to help develop an efficient, convenient, and secure debit card payment system. Today, debit cards have become the primary non-cash payment methodology of choice for millions of Americans and thousands of merchants, who conducted almost 38 billion transactions worth more than \$1.45 trillion in 2009 alone. It is undeniable that the innovation of debit card payment has been a tremendous economic boon for all—consumers, merchants, and the financial-services industry.

3. *Amici* have an interest in being heard on the Durbin Amendment and the Board’s action under that statute, which are presented in this litigation. The Board’s erroneous interpretation of the Durbin Amendment threatens to wreak havoc on a vital component of our

nation's economy and cause substantial structural disruptions to the financial-services industry. The Board has proposed capping interchange fees at 12 cents per transaction—an amount that, as the Board acknowledges, is far below issuers' actual costs for their debit card businesses and does not allow for a reasonable return on issuers' substantial investments in those businesses. If the Board's action were permitted to take effect, it would immediately reduce interchange fee revenues by as much as 80 percent. This unprecedented economic intervention would result in a staggering drop (in the aggregate) of approximately \$12 billion in revenues *per year* for banks and credit unions, including *amici's* members, and would deprive millions of Americans (particularly low-income Americans) of access to the inexpensive, reliable, convenient, secure, and efficient method of electronic debit card payment. As the Government has acknowledged, however, nothing in the Durbin Amendment requires the Board to intervene in this manner by establishing hard price caps.

4. *Amici* appear before this Court in support of TCF to explain the detrimental effect the Board's action would have on the stability of the electronic payment structure that undergirds literally trillions of dollars of our economy, as well as the serious constitutional issues that the Board's action raises.

5. No counsel for a party authored *amici's* brief in whole or in part, and no party or counsel for a party made a monetary contribution to fund its preparation or submission to the Court. No person other than *amici*, their members, and their counsel made a monetary contribution to the preparation or submission of the brief *amici curiae* that *amici* would file on or before March 11, 2011, in the event that the Court grants this motion.

6. Counsel for *amici* have consulted with counsel for TCF and for Defendants Benjamin S. Bernanke, Janet L. Yellen, Kevin M. Warsh, Elizabeth A. Duke, Sarah Bloom

Raskin, and John Walsh. Neither side opposes this motion or the filing of *amici*'s brief.

For all of the foregoing reasons, *amici* respectfully request that the Court grant their motion for leave to file a brief *amici curiae* in support of Plaintiff TCF National Bank.

Dated this 4th day of March, 2011.

Respectfully submitted,

/s/ James A. Power

Roger W. Damgaard

James A. Power

WOODS, FULLER, SHULTZ & SMITH, P.C.

300 S. Phillips Avenue, Suite 300

Sioux Falls, SD 57104

(605) 336-3890

Roger.Damgaard@WoodsFuller.com

Jim.Power@WoodsFuller.com

*Attorneys for Amici Curiae The Clearing House Association L.L.C., American Bankers Association, Consumer Bankers Association, Credit Union National Association, The Financial Services Roundtable, Independent Community Bankers of America, Midsize Bank Coalition of America, and National Association of Federal Credit Unions*

Paul Saltzman

Rob Hunter

THE CLEARING HOUSE ASSOCIATION L.L.C.

450 West 33rd Street

New York, NY 10001

H. Rodgin Cohen

Matthew A. Schwartz

SULLIVAN & CROMWELL LLP

125 Broad Street

New York, NY 10004

Seth P. Waxman

Steven P. Lehotsky

WILMER CUTLER PICKERING

HALE AND DORR LLP

1875 Pennsylvania Avenue, NW

Washington, DC 20006

Christopher R. Lipsett

Noah A. Levine

Pamela K. Bookman

WILMER CUTLER PICKERING

HALE AND DORR LLP

399 Park Avenue

New York, NY 10022

*Attorneys for Amicus The Clearing House Association L.L.C.*

Gregory F. Taylor  
AMERICAN BANKERS ASSOCIATION  
1120 Connecticut Avenue, NW  
Washington, DC 20036

Eric L. Richard  
CREDIT UNION NATIONAL ASSOCIATION  
601 Pennsylvania Avenue, NW, South  
Washington, DC 20004

Karen M. Thomas  
INDEPENDENT COMMUNITY BANKERS OF  
AMERICA  
1615 L Street, NW, Suite 900  
Washington, DC 20036

Carrie R. Hunt  
NATIONAL ASSOCIATION OF FEDERAL  
CREDIT UNIONS  
3138 10th Street North  
Arlington, VA 22201

Steven I. Zeisel  
CONSUMER BANKERS ASSOCIATION  
1000 Wilson Boulevard, Suite 2500  
Arlington, VA 22209

Rich Whiting  
THE FINANCIAL SERVICES ROUNDTABLE  
1001 Pennsylvania Avenue, NW, Suite 500  
Washington, DC 20004

Mike Cahill  
MIDSIZE BANK COALITION OF AMERICA  
555 South Flower Street  
18th Floor  
Los Angeles, CA 90071